

***BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554***

|                            |                        |
|----------------------------|------------------------|
| In the Matter of           | )                      |
|                            | ) MM Docket No. 00-10  |
| Establishment of a Class A | ) MM Docket No. 99-292 |
| Television Service         | ) RM-9260              |

To: The Commission, *en banc*

**COMMENTS OF IVAN C. NACHMAN**

IVAN C. NACHMAN (“Nachman”), by his attorney, respectfully submits his comments to the Federal Communications Commission in response to the Order and Notice of Proposed Rule Making (the “NPRM”) in the captioned proceeding, FCC 00-16, released January 13, 2000. Nachman submits that the Commission should not deny Class A status to those LPTV stations that are willing to meet the statutory criteria for programming and hours of operation,<sup>1</sup> but which were not yet licensed and operating during the period August 31, 1999 through November 28, 1999. In support thereof, Nachman respectfully states:

Nachman is the licensee of LPTV Station WHDS-LP, Channel 32, Savannah, Georgia (formerly W32CC). The Commission may take official notice that the current authorization is the result of a displacement application which was granted on September 30, 1999. Additionally, the Commission may officially notice that Nachman’s license application for WHDS-LP was timely filed on November 12, 1999 and granted on December 10, 1999. Consequently, simply because of the quirk

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<sup>1</sup> Community Broadcasters Protection Act of 1999 (the “Act”), Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I, codified at 47 U.S.C. §336(f).

of timing in the licensing process, Nachman could not qualify for Class A status if the only criteria adopted by the Commission for granting such status are the criteria explicitly set forth in the Act.

Nachman respectfully submits that confining Class A status strictly to the enumerated statutory criteria would be unwarranted and entirely too restrictive. Nachman is also willing to comply with the requirements that WHDS-LP broadcast a minimum of 18 hours per day and an average of at least 3 hours per week of programming produced in the Savannah market area. Accordingly, Nachman timely filed a statement of eligibility on January 27, 2000 certifying to this effect and urging the Commission to exercise its public interest powers granted by the Act to broaden the class of LPTV station eligible to obtain Class A status.

In Nachman's view, there is no rational distinction in principle between LPTV broadcasters who happened to be licensed and operating during the 90 days prior to the enactment of the Act, and other stations, like Nachman, who are willing to perform exactly the same public interest function, but who did not happen to get their license in time to meet the operating period set forth in the Act. If it is in the public interest to reward existing LPTV stations who broadcast 18 hours per day, and an average of at least three hours of local programming per week, by granting them Class A status, then it is impossible to understand why it is not likewise in the public interest to encourage more recently licensed LPTV stations to do likewise.

The Act clearly gives the Commission the power in 47 U.S.C. §336(f)(2)(B) to grant Class A status to licensees situated similarly to Nachman. The Commission could do so employing the application window specified in the Act, *i.e.*, by requiring that appropriate applications be filed within 30 days after implementing rules are adopted. Moreover, requiring that all applications seeking Class

A status be filed during the same filing window would avoid any legitimate concerns that expanding the Class A certification process beyond the licensees expressly recognized in the Act would unduly complicate the transition to digital television by full power television stations.

Under these circumstances, Nachman requests that the Commission also grant Class A status to LPTV licensees who apply for such status during the prescribed filing window and who meet the operational and programming benchmarks not later than a date certain, such as July 1, 2000.

Respectfully submitted,

IVAN C. NACHMAN

By: s/Kenneth E. Hardman

Kenneth E. Hardman

His Attorney

MOIR & HARDMAN  
1828 L Street, N.W., Suite 901  
Washington, DC 20036  
Telephone: (202) 223-3772  
Facsimile: (202) 833-2416

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